

August 2, 2005

David K. Thomas
[Address Redacted]
Riverside, CA 92506

**Re: Your Request for Advice
Our File No. A-05-106**

Dear Mr. Thomas:

This letter is in response to your request on behalf of yourself, David K. Thomas, for advice regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”).¹

QUESTION

Does appearance before a consultant selection panel for a private-sector employer either in person or in materials submitted to the panel constitute an appearance before your former state agency?

CONCLUSION

If an employee of your former state agency is involved in the consultant selection process, appearance before the panel – either in person or in materials submitted by your employer to the panel – would be prohibited for one year after you left state service.

FACTS

We previously advised you regarding the post-government employment restrictions in the *Thomas* Advice Letter, No. A-05-089. You seek additional information as a follow-up to that letter. You terminated employment with Caltrans on June 16, 2005,

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

as Office Chief, Design C, for Caltrans District 8. Your start date with Parsons Brinkerhoff (PB) was June 20, 2005.

PB is in the process of submitting a Statement of Qualifications (SOQ) as a candidate for up to three potential contracts for engineering services. The nature of these potential contracts is preparation of Plans, Specifications and Estimates (PS&E) for three interchanges on State Route 241 Toll Road in the Cities of Orange and Anaheim. The funding sponsor for these contracts is The Irvine Community Development Company. The Toll Road Authority is the owner of the toll road. However, since this route is also part of the State Highway System, Caltrans District 12 has an oversight role in these contracts.

PB would like to submit your name and resume' as the proposed project manager to lead the consultant team of approximately 6 engineers to develop the PS&E. This submittal would be made in writing directed to the Irvine Company from PB's Area Manager from the Orange office. As the project manager, you would be responsible for coordinating between the sponsor, local agencies, and Caltrans for the development of the project. Project development team meetings typically occur on a monthly basis. You ask whether the one-year ban applies to your appearance before an interview panel in the case where a Caltrans employee is sitting on the panel for this consultant selection process. You also ask whether the listing of your name as the project manager would violate the one-year ban if a Caltrans employee is involved in the selection process. In the case that a Caltrans employee is not on the interview panel or involved in the consultant selection process, you ask whether your participation or appearance is permissible under the one-year ban.

ANALYSIS

On May 12, 2005, we provided written advice on the application of post-government employment restrictions in a letter to you, the *Thomas* Advice Letter, *supra*. We shall attempt to avoid duplicative recitation of the governing law and principles discussed previously, but where necessary will emphasize the applicable rules in this letter. You have not asked us to revise our analysis in that letter, and we refer you to it for a broad discussion of the rules applicable to you.

It is useful to describe, once again, the one-year ban. The Act prohibits specified officials, for one year after leaving state service, from being paid to communicate with or appear before their former agency for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding or revocation of a permit, license, grant, contract or the sale of goods or property. Section 87406(d)(1) specifically provides that no designated employee of a state administrative agency:

“ . . . for a period of one year after leaving office or employment, shall, for compensation, act as agent or attorney for, or otherwise

represent, any other person, by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof, for which he or she worked or represented during the 12 months before leaving office or employment, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. For purposes of this paragraph, an appearance before a state administrative agency does not include an appearance in a court of law, before an administrative law judge, or before the Workers' Compensation Appeals Board."

As we advised previously, as an engineer with Caltrans, you are subject to the one-year ban.

Your questions here probe the boundaries of what it means to "appear before" or communicate with your former agency, Caltrans. Generally, the scope of the prohibition has been liberally construed to fulfill its purposes. Thus, we have advised that a former state official makes a formal or informal appearance for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property, where the former official is identified in connection with a communication in order to influence your former employer. (*Harrison* Advice Letter, No. A-92-289.) However, advising an employer on the procedural requirements, plans, or policies of your former agency would not be a prohibited "appearance" or "communication" under Section 87406 so long as you are not identified in connection with any of your private sector employer's efforts to influence your former public sector employer. (*Harrison, supra*; *Perry* Advice Letter, No. A-94-004.)

In addition, we have advised that the inclusion of one's name in an employer's normal letterhead does not constitute an appearance before or communication to a former agency for purposes of Section 87406. However, we have advised that identification of a former official in materials submitted to a former agency is sufficient to constitute an appearance or communication. (*Roberts* Advice Letter, A-02-190.)

Turning to the circumstances you describe, in the event a Caltrans employee is participating in proceedings on the consultant selection committee, you may not appear before the panel. In the event no Caltrans employee participates in the decision, either in person or by reviewing materials in which you would be identified, then you would not be making an appearance before your former agency. In addition, the identification of you as a project manager in materials submitted by your employer also is not permissible under the one-year ban. Unlike the letterhead circumstance, the purpose of identifying

the project managers would be a part of the larger purpose of obtaining the contract, and would therefore fall within the one-year ban.²

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: C. Scott Tocher
Senior Counsel, Legal Division

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² You submitted a third inquiry to the Commission asking whether the analysis of the one-year and permanent bans would be different in the event you were loaned out to LAN Engineering and made appearances before your former agency in your capacity as a part-time employee with LAN. Your status as a “contract hire” does not change the analysis, however. The same rules and analysis apply in work for LAN as it does for PB.